

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
ARCHIE GROW, dba
GROW AND SONS LUMBER,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 84-45

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

The matter, the appeal of a \$250 notice and order of civil penalty for the alleged violation of Sections 8.02(1) and 8.02(4) of Regulation I, came before the Pollution Control Hearings Board; Lawrence J. Faulk and Gayle Rothrock (presiding), at a hearing in Seattle on April 18, 1984.

Appellant was represented by Archie Grow, its Senior Partner; respondent was represented by Keith D. McGoffin, its attorney. Court Reporter Sheila Mecartea recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted and

1 examined. Argument was heard. From the testimony, evidence, and
2 contentions of the parties, the Board makes these

3 FINDINGS OF FACT

4 I

5 Pursuant to RCW 43.21B.260, respondent has filed a certified copy
6 of its Regulation I, and amendments thereto, which are noticed.

7 Section 8.02(1) makes it unlawful for any person to cause or allow
8 an outdoor fire in an area where respondent agency has prohibited
9 fires altogether.

10 Section 8.02(4) makes burning for the purpose of demolition,
11 salvage, or reclamation of materials unlawful.

12 Section 3.29 provides for a civil penalty of up to \$250 per day
13 for each violation.

14 II

15 Appellant company operates a building demolition and disposal
16 company in the mid-Puget Sound area, often contracting with the
17 Burlington Northern Railroad for purchase and removal of unwanted
18 structures on its properties. Appellant Grow has been in the
19 demolition and removal business for 25 years and is senior partner in
20 the appellant company, whose offices are in Everett.

21 III

22 On December 5, 1983, appellant company was demolishing and
23 planning for removal of a brick and wood warehouse building near the
24 train tracks in the Tide Flats area of Tacoma when respondent
25

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1 inspector's attention was drawn to blue smoke and flames coming out of
2 a very large burn barrel by the tracks near East 21st and D Streets.

3 The inspector photographed the barrel fire composed of wood
4 debris, and asked to see the foreman. Two people were standing near
5 the burn barrel on that cold day. The inspector was advised that
6 appellant company had purchased the building and had a contract to
7 dump the demolition debris to a landfill site. The inspector advised
8 a younger partner in the company there on site of the regulations
9 prohibiting such fires and asked that it be extinguished.

10 Next the inspector contacted the trackside property owners,
11 Burlington Northern Railroad, advised their agency of the incident,
12 and arranged for mailing of notices of violation to both parties.

13 IV

14 In 1976 respondent PSAPCA declared the Tacoma Tide Flats a no-burn
15 area, and has retained it in that status, due to non-attainment of
16 federal ambient air quality standards.

17 V

18 Appellant Grow and Burlington Northern Inc., each received Notice
19 and Order of Civil Penalty #5914, stemming from this event. Appellant
20 Grow, on behalf of himself and his company, appealed the \$250 penalty
21 to this Board on January 24, 1984, contending the subject fire burned
22 only clean wood and was for hand-warming purposes on a cold, rainy day.

23 VI

24 Appellant company has no previous violations of open burning
25 regulations.

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VII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board makes these

CONCLUSIONS OF LAW

I

The Board concludes appellant Grow and Sons Lumber technically violated Sections 8.02(1) and 8.02(4), as alleged, on December 5, 1983. Even hand-warming fires are not allowed in this area under respondent's regulations. PCHB 954 and 962, and PCHB 70-18.

II

The subject occurrence on December 5, 1983, was unfortunate. Given appellants record of no cited violations of Regulation I, and the circumstances of this event, the Board concludes that the imposition of the maximum fine was excessive so one-half of the \$250 civil penalty should be suspended for one year on condition that appellant not violate any provisions of Regulation I for that period.

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.


From these Conclusions the Board enters this

ORDER

The \$250 civil penalty is affirmed; provided however, that \$125 of the civil penalty is suspended on condition that appellant not violate respondent's Regulation I for a period of one year after the date of this order.

Done this 4th day of May, 1984.

POLLUTION CONTROL HEARINGS BOARD


GAYLE ROTHROCK, Chairman


LAWRENCE J. FAULK, Vice Chairman

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